



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0646/P1

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THURS. 1/2/03
~~12/27~~ OR Friday, 1/3/03
~~FRIDAY 1/3/03~~
~~12/27~~

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 12-13-02

SOON

D-N

1 AN ACT ^{DON'T GEN. CAT.} relating to: the Uniform Sales and Use Tax Administration Act,
2 granting rule-making authority, making an appropriation, and providing a
3 penalty.

head Taxation
sub Other taxation

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 66.0615 (1m) (f) 2. of the statutes is amended to read:
5 66.0615 (1m) (f) 2. Sections 77.51 (14) (c), ^{and} ~~(f) and (j)~~ and (14g), 77.52 (3), (4), ~~(6)~~
6 and (18), [✓] 77.522, 77.58 (1) to (5) and (7), 77.59, 77.60, 77.61 (2), (5), (8), (9) and (12)
7 to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the
8 tax described under subd. 1.

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615.

SECTION 2. 73.03 (50) (d) of the statutes is amended to read:

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INSERT
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1 73.03 (50) (d) In the case of a sole proprietor, signs the form or, in the case of
2 other persons, has an individual who is authorized to act on behalf of the person sign
3 the form, or, in the case of a single-owner entity that is disregarded as a separate
4 entity under section 7701 of the Internal Revenue Code, the person is the owner. Any
5 person who may register under this subsection may designate an agent, in writing,
6 to register with the department under this subsection, subject to the department's
7 approval. In this paragraph, "sign" has the meaning given in s. 77.51 (17r).

History: 1971 c. 40, 215; 1973 c. 90; 1975 c. 39; 1977 c. 143; 1977 c. 196 s. 130 (7); 1977 c. 313; 1979 c. 34; 1979 c. 110 s. 60 (13); 1979 c. 221, 350; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 275 s. 15 (4); 1983 a. 524; 1983 a. 538 s. 269 (3); 1985 a. 12, 29, 273; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 328, 378, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 74, 335; 1991 a. 39, 219, 313, 316; 1993 a. 16, 112, 205, 490; 1995 a. 27 ss. 3434g to 3440m, 9145 (1); 1995 a. 209, 233; 1997 a. 27, 35, 191, 237, 252; 1999 a. 9, 31, 185; 2001 a. 16, 44, 104, 107, 109.

***NOTE: By using the definition of "sign" under s. 77.51 (17r), the department may require another method of authentication other than a written signature.

8 SECTION 3. 73.03 (50b) of the statutes is created to read:

9 73.03 (50b) To waive the fee established under sub. (50) for applying for and
10 renewing the business tax registration certificate, if the person who is applying for
11 or renewing the certificate is not required for purposes of ^{ch.} ~~chapter~~ 77 to hold such ~~an~~ a
12 certificate.

13 SECTION 4. 73.03 (59) of the statutes is created to read:

14 73.03 (59) To ^{s.} do all of the following related to the Uniform Sales and Use Tax
15 Administration Act:

16 (a) Certify compliance with the agreement, as defined in ^{s.} 77.65 (2) (a).

17 (b) Pursuant to the agreement, as defined in ^{s.} 77.65 (2) (a), certify certified
18 service providers, as defined in s. 77.51 (1g), and certified automated systems, as
19 defined in s. 77.524 (1) (a).

20 (c) Issue a tax identification number to a person who claims an exemption
21 under subch. III or V of ch. 77 and who is not required to register with the department
22 for the purposes of subch. III or V of ch. 77.

1 (d) Maintain a database that is accessible to sellers and certified service
2 providers, as defined in s. 77.51 (1g),[✓] that indicates whether items defined in
3 accordance with the Uniform Sales and Use Tax Administration Act are taxable or
4 nontaxable.

5 (e) Maintain a database that is accessible to sellers and certified service
6 providers, as defined in s. 77.51 (1g),[✓] that indicates tax rates, taxing jurisdiction
7 boundaries, and zip code or address assignments related to the administration of
8 taxes imposed under subchs. III and V of ch. 77.[✓]

****NOTE: The provisions of the agreement adopted November 12 related to the
issues identified under s. 73.03 (59), as created above, require^{on} the governing board or
member states to do certain things. Obviously, this state has no jurisdiction over the
governing board or the member states. Therefore, it would be nonsensical to have the
statutes direct such entities. Consequently, I have given the department broad authority
in these areas so that the department may comply with the agreement. Also, please note
that, under current law, the department already has broad authority to act in accordance
with the streamlined sales and use tax agreement. See s. 77.65 (3).^{ing}

9 SECTION 5. 76.07 (4g) (b) 8. of the statutes is amended to read:

10 76.07 (4g) (b) 8. Determine transport-related revenue by adding public service
11 revenue allocated to this state on the basis of routes for which the company is
12 authorized to receive subsidy payments, mutual aid allocated to this state on the
13 basis of the ratio of transport revenues allocated to this state to transport revenues
14 everywhere in the previous year, in-flight sales allocated to this state as they are
15 allocated under ~~s. ss.~~ 77.51 (14r) and 77.522[✓] and all other transport-related revenues
16 from sales made in this state.

History: 1971 c. 23; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 205, 490; 1995 a. 351.

17 SECTION 6. 77.51 (1) of the statutes is renumbered 77.51 (1d).

18 SECTION 7. 77.51 (1b) of the statutes is created to read:

19 77.51 (1b) "Alcohol beverage" means a beverage that is suitable for human
20 consumption and that contains 0.5% or more of alcohol by volume.

1 **SECTION 8.** 77.51 (1e) of the statutes is created to read:

2 77.51 (1e) "Candy" means a preparation of sugar, honey, or other natural or
3 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or
4 flavorings in the form of bars, drops, or pieces. "Candy" does not include a
5 preparation that contains flour or that requires refrigeration.

6 **SECTION 9.** 77.51 (1n) of the statutes is created to read:

7 77.51 (1n) "Computer" means an electronic device that accepts information in
8 digital or similar form and that manipulates such information to achieve a result
9 based on a sequence of instructions.

10 **SECTION 10.** 77.51 (1p) of the statutes is created to read:

11 77.51 (1p) "Computer software" means a set of coded instructions designed to
12 cause a computer or automatic data processing equipment to perform a task.

13 **SECTION 11.** 77.51 (2m) of the statutes is created to read:

14 77.51 (2m) "Delivery charges" means charges by a seller to prepare and deliver
15 personal property or services to a location designated by the purchaser of the
16 property or services, including charges for transportation, shipping, postage,
17 handling, crating, and packing.

18 **SECTION 12.** 77.51 (3p) of the statutes is created to read:

19 77.51 (3p) "Dietary supplement" means a product that is intended to
20 supplement a person's diet, if all of the following apply:

21 (a) The product contains any of the following ingredients or any combination
22 of any of the following ingredients:

23 1. A vitamin.

24 2. A mineral.

25 3. An herb or other botanical.

1 4. An amino acid.

2 5. A substance, other than an ingredient under subds. 1. to 4., that is intended
3 for human consumption and that increases total dietary intake.

4 6. A concentrate, metabolite, constituent, or extract.

5 (b) The product is intended for ingestion in tablet, capsule, powder, or liquid
6 form, or, if not intended for ingestion in such forms, is not represented as food or food
7 ingredient and is not represented for use as the sole item of a meal or diet.

8 (c) The product is labeled as a dietary supplement as required under 21 CFR
9 101.36.

10 **SECTION 13.** 77.51 (3pd) of the statutes is created to read:

11 77.51 (3pd) "Direct mail" means a service whereby printed material is
12 delivered by the U.S. postal service or other delivery service to a mass audience or
13 to addresses on a mailing list provided by or at the direction of the purchaser of the
14 service, if the cost of the printed material or any tangible personal property included
15 with the printed material is not billed directly to the recipients of the printed
16 material. "Direct mail" includes any tangible personal property provided directly or
17 indirectly by the purchaser of the service to the seller of the service for inclusion in
18 any package containing printed material. "Direct mail" does not include multiple
19 items •

20 **SECTION 14.** 77.51 (3pj) of the statutes is created to read:

21 77.51 (3pj) "Drug" means a compound, substance, or preparation, other than
22 food and food ingredients, dietary supplements, or alcoholic beverages, to which any
23 of the following applies:

1 (a) It is listed in the United States Pharmacopoeia, Homeopathic
2 Pharmacopoeia of the United States, or National Formulary, or any supplement to
3 any of them.

4 (b) It is intended for use in diagnosing, curing, mitigating, treating, or
5 preventing a disease.

6 (c) It is intended to affect a function or structure of the body.

7 SECTION 15. 77.51 (3pm) of the statutes is created to read:

8 77.51 (3pm) "Durable medical equipment" means equipment, including the
9 repair of and replacement parts for the equipment, that is primarily used for a
10 medical purpose related to a person; that can withstand repeated use; that is not
11 generally useful to a person who is not ill or injured; and that is not placed in or worn ✓
12 on the body.

13 SECTION 16. 77.51 (3t) of the statutes is created to read:

14 77.51 (3t) "Food and food ingredient" means a substance in liquid,
15 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
16 for chewing, by humans and that is ingested or chewed for its taste or nutritional
17 value. "Food and food ingredient" does not include alcohol beverages or tobacco.

18 SECTION 17. 77.51 (4) ✓ of the statutes is repealed. ✕

19 SECTION 18. 77.51 (7) of the statutes is repealed and recreated to read:

20 77.51 (7) (a) "Lease or rental" means any transfer of possession or control of
21 tangible personal property for a fixed or indeterminate term and for consideration,
22 including a transfer that includes future options to purchase or extend, regardless
23 of whether such transfer is considered a lease or rental under generally accepted
24 accounting principles, or any provision of federal or state law.

25 (b) "Lease or rental" does not include:

any of the following

1 1. A transfer of possession or control of tangible personal property under a
2 security agreement or deferred payment plan, if such agreement or plan requires
3 transferring title to the tangible personal property after making all required
4 payments.

5 2. A transfer of possession or control of tangible personal property under any
6 agreement that requires transferring title to the tangible personal property after
7 making all required payments and after paying an option price that does not exceed
8 the greater of \$100 or 1% of the total amount of the required payments.

9 3. Providing tangible personal property along with an operator, if the operator
10 is necessary for the tangible personal property to perform in the manner for which
11 it is designed and if the operator does more than maintain, inspect, or set up the ⁴
12 tangible personal property.

13 4. Agreements related to the transfer of possession or control of motor vehicles
14 or trailers, if the amount of any consideration may be increased or decreased by
15 reference to the amount realized on the sale or other disposition of such motor
16 vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

17 **SECTION 19.** 77.51 (7m) of the statutes is created to read:

18 77.51 (7m) "~~Mobility~~ enhancing equipment" means equipment, including the
19 repair of and replacement parts for the equipment, that is primarily used to provide
20 or increase the ability of a person to move from one place to another; that may be used
21 in a home or motor vehicle; and that is generally not used by a person who has normal
22 mobility. "~~Mobility~~ enhancing equipment" does not include a motor vehicle or any
23 equipment on a motor vehicle that is generally provided by the motor vehicle
24 manufacturer.

25 **SECTION 20.** 77.51 (10m) of the statutes is created to read:

1 77.51 (10m) (a) "Prepared food" means:

2 1. Food and food ingredient^s sold heated. ✓

3 2. Food and food ingredient^s sold with eating utensils that are provided by the

4 retailer of the food and food ingredient^s including plates, knives, forks, spoons,
5 glasses, cups, napkins, and straws.

6 3. Except as provided in par. (b) 1. to 3., 2 or more food ingredients mixed or
7 combined by a retailer for sale as a single item[✓] that[✓] requires[✓] no further preparation
8 by the consumer.

9 (b) "Prepared food" does not include:

10 1. Two or more food ingredients mixed or combined by a retailer for sale as a
11 single item, if the retailer's primary classification in the 1997 North American
12 Industry Classification System, published by the federal office of management and
13 budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla
14 manufacturing under industry group number 3118.

15 2. Two or more food ingredients mixed or combined by a retailer for sale as a
16 single item, sold unheated, and sold by volume or weight, unless the ingredients are
17 sold as provided in par. (a) 2. ✓

18 3. Bakery items made by a retailer, including breads, pastries, donuts, cakes,
19 pies, cookies, and tortillas, unless the items are sold as provided in par. (a) 2. ✓

20 4. Food and food ingredient^s that^s are only sliced, repackaged, or pasteurized by
21 a retailer.

22 SECTION 21. 77.51 (10p) of the statutes is created to read:

23 77.51 (10p) "Prewritten computer software" means computer software that is
24 not designed according to a specific purchaser's specification and computer software
25 that is designed according to a prospective purchaser's specification, but sold to a

1 different purchaser. "Prewritten computer software" includes computer software
2 that is modified according to a specific purchaser's specification, unless the sales
3 price of the modification is provided to the purchaser on an invoice or other statement
4 as a reasonable, separately stated charge.

5 **SECTION 22.** 77.51 (11m) of the statutes is created to read:

6 77.51 (11m) "Prosthetic device" means a device, including the repair of and
7 replacement parts for the device, that is placed in or worn on the body to replace a
8 missing portion of the body; to prevent or correct a physical deformity or malfunction;
9 or to support a weak or deformed portion of the body.

10 **SECTION 23.** 77.51 (12m) of the statutes is created to read:

11 77.51 (12m) (a) "Purchase price" means the total amount of consideration,
12 including cash, credit, property, and services, for which personal property or services
13 are sold, leased, or rented, valued in money, whether received in money or otherwise,
14 without any deduction for the following:

- 15 1. The seller's cost of the property sold.
- 16 2. The cost of materials used, labor or service cost, interest, losses, all costs of
17 transportation to the seller, all taxes imposed on the seller, and any other expense
18 of the seller.
- 19 3. Charges by the seller for any services necessary to complete a sale, not
20 including delivery and installation charges.
- 21 4. Delivery charges, except as provided ⁱⁿ ~~under~~ par. (b) 4. *✓*
- 22 5. Installation charges.
- 23 6. The value of exempt personal property that is given to the purchaser of the
24 property, if the exempt personal property is bundled with taxable personal property
25 and sold by the seller as a single product or piece of merchandise.

① 7. The value of coins and stamps of the United States ^{that are} sold or traded as
2 collectors' items above their face value.

3 8. The value of leased property ^{that is} affixed to real property if the lessor has the right
4 to remove the leased property upon breach or termination of the lease agreement,
5 unless the lessor of the leased property is also the lessor of the real property to ~~the~~
6 which the leased property is affixed.

7 (b) "Purchase price" does not include:

⑧ 8 1. Discounts, including cash, ~~term~~, or coupons, that are not reimbursed by a 3rd
9 party; that are allowed by a seller; and that are taken by a purchaser on a sale.

10 2. Interest, financing, and carrying charges from credit that is extended on a
11 sale of personal property or services, if the amount of the interest, financing, or
12 carrying charges is separately stated on the invoice, bill of sale, or similar document
13 that the seller gives to the purchaser.

14 3. Any taxes legally imposed directly on the purchaser that are separately
15 stated on the invoice, bill of sale, or similar document that the seller gives to the
16 purchaser.

17 4. Delivery charges for direct mail.

18 5. In all transactions in which an article of tangible personal property is traded
19 toward the purchase of an article of greater value, the amount of the purchase price
20 that represents the amount allowed for the article traded, except that this
21 subdivision does not apply to any transaction ^{to} ~~for~~ which s. 77.54 (1g) applies.

22 6. If a person who purchases a motor vehicle presents a statement issued under
23 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
24 statement within 60 days from the date of receiving a refund under s. 218.0171 (2)

25 (b) 2. b., the trade-in amount specified in the statement issued under s. 218.0171 (2)

to the seller

subdivision
 1 (cq), but not to exceed the purchase price from the sale of the motor vehicle. This
 2 ~~subsection~~ applies only to the first motor vehicle purchased by a person after
 3 receiving a refund under s. 218.0171 (2) (b) 2. b.

4 SECTION 24. 77.51 (13) (o) of the statutes is amended to read:

5 77.51 (13) (o) A person selling ~~medicine~~ drugs for animals to a veterinarian.

6 As used in this paragraph, "animal" includes livestock, pets and poultry.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102.

13s 7 SECTION 25. 77.51 (13m) of the statutes is created to read:

8 77.51 (13m) "Retail sale" or "sale at retail" means any sale, lease, or rental for
 9 any purpose other than resale, sublease, ~~sublease~~.

10 SECTION 26. 77.51 (14) (intro.) of the statutes is amended to read:

11 77.51 (14) (intro.) "Sale", ~~"sale, lease or rental"~~, ~~"retail sale"~~, ~~"sale at retail"~~, or
 12 ~~equivalent terms include~~ includes any ~~one or all~~ of the following: ^{AA} the transfer of the
 13 ownership of, title to, possession of, or enjoyment of tangible personal property or
 14 services for use or consumption but not for resale as tangible personal property or
 15 services and includes:

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102.

16 SECTION 27. 77.51 (14) (d) of the statutes is repealed.

17 SECTION 28. 77.51 (14) (j) of the statutes is repealed.

18 SECTION 29. 77.51 (14r) of the statutes is amended to read:

19 77.51 (14r) A sale or purchase involving transfer of ownership of property shall
 20 be deemed to have been completed at the time ~~and place~~ when ~~and where~~ possession
 21 is transferred by the seller or the seller's agent to the purchaser or the purchaser's
 22 agent, except that for purposes of this subsection a common carrier or the U.S. postal

1 service shall be deemed the agent of the seller, regardless of any f.o.b. point and
2 regardless of the method by which freight or postage is paid.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102.

3 **SECTION 30.** 77.51 (15) of the statutes is repealed.

4 **SECTION 31.** 77.51 (15a) of the statutes is created to read:

5 77.51 (15a) (a) "Sales price" means the total amount of consideration, including
6 cash, credit, property, and services, for which personal property or services are sold,
7 leased, or rented, valued in money, whether received in money or otherwise, without
8 any deduction for the following:

9 1. The seller's cost of the property sold.

10 2. The cost of materials used, labor or service cost, interest, losses, all costs of
11 transportation to the seller, all taxes imposed on the seller, and any other expense
12 of the seller.

13 3. Charges by the seller for any services necessary to complete a sale, including
14 delivery and installation charges.

15 4. Delivery charges, except as provided ~~under~~ⁱⁿ par. (b) 4.

16 5. Installation charges.

17 6. The value of exempt personal property that is given to the purchaser of the
18 property, if the exempt personal property is bundled with taxable personal property
19 and sold by the seller as a single product or piece of merchandise.

20 7. The value of coins and stamps of the United States ^{that are} sold or traded as
21 collectors' items above their face value.

22 8. The value of leased property ^{that is} affixed to real property if the lessor has the right
23 to remove the leased property upon breach or termination of the lease agreement,

1 unless the lessor of the leased property is also the lessor of the real property to ~~the~~
2 which the leased property is affixed.

3 (b) "Sales price" does not include:

4 1. Discounts, including cash, ~~term~~^s or coupons, that are not reimbursed by a 3rd
5 party; that are allowed by a seller; and that are taken by a purchaser on a sale.

6 2. Interest, financing, and carrying charges from credit that is extended on a
7 sale of personal property or services, if the amount of the interest, financing, or
8 carrying charges is separately stated on the invoice, bill of sale, or similar document
9 that the seller gives to the purchaser.

10 3. Any taxes legally imposed directly on the purchaser that are separately
11 stated on the invoice, bill of sale, or similar document that the seller gives to the
12 purchaser.

13 4. Delivery charges for direct mail.

14 5. In all transactions in which an article of tangible personal property is traded
15 toward the purchase of an article of greater value, the amount of the sales price that
16 represents the amount allowed for the article traded, except that this subdivision
17 does not apply to any transaction ~~for~~^{to} which s. 77.54 (1g) applies.

18 6. If a person who purchases a motor vehicle presents a statement issued under
19 s. 218.0171 (2) (cq) [✓] to the seller at the time of purchase, and the person presents the
20 statement [✓] within 60 days from the date of receiving a refund under s. 218.0171 (2)
21 (b) 2. b., [✓] the trade-in amount specified in the statement issued under s. 218.0171 (2)
22 (cq), [✓] but not to exceed the sales price from the sale of the motor vehicle. This

23 ~~subsection~~[✓] applies only to the first motor vehicle purchased by a person after
24 receiving a refund under s. 218.0171 (2) (b) 2. b. [✓]

25 SECTION 32. 77.51 (17) of the statutes is amended to read:

subdivision

to the seller

1 77.51 (17) "Seller" includes every person selling, leasing or renting tangible
2 personal property or selling, performing or furnishing services of a kind the gross
3 receipts sales price from the sale, lease, rental, performance or furnishing of which
4 ¹⁵
④ are required to be included in the measure of the sales tax.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102.

5 SECTION 33. 77.51 (17w) of the statutes is created to read:

6 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5% of
7 alcohol and that contains natural or artificial sweeteners. "Soft drink" does not
8 include a beverage that contains milk or milk products; soy, rice, or similar milk
9 substitutes; or more than 50% vegetable or fruit juice by volume.

10 SECTION 34. 77.51 (20) of the statutes is amended to read:

11 77.51 (20) "Tangible personal property" means ~~all tangible personal property~~
12 ~~of every kind and description that can be seen, weighed, measured, felt, or touched,~~ ✓
13 ~~or that is in any other manner perceptible to the senses,~~ ↓
14 ~~natural gas, steam and, water, and also leased property affixed to realty if the lesser~~
15 ~~has the right to remove the property upon breach or termination of the lease~~
16 ~~agreement, unless the lesser of the property is also the lesser of the realty to which~~
17 ~~the property is affixed. "Tangible personal property" also includes coins and stamps~~
18 ~~of the United States sold or traded as collectors' items above their face value and~~
19 ~~computer programs except custom~~ prewritten computer programs software.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102.

20 SECTION 35. 77.51 (21) of the statutes is amended to read:

1 77.51 (21) "Taxpayer" means the person ^{who is} required to pay, collect, ^{or} account for or
 2 who is otherwise directly interested in the taxes imposed by this subchapter,
 3 including a certified service provider.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102.

4 SECTION 36. 77.51 (22) (bm) of the statutes is created to read:

5 77.51 (22) (bm) In this subsection, "exercise of any right or power over tangible
 6 personal property or taxable ^x services" includes selecting recipients, determining
 7 mailing schedules, or otherwise directing the distribution, dissemination, or
 8 disposal of tangible personal ^x property or taxable ^x services, regardless of whether the
 9 purchaser of such property owns or physically possesses the property. ^x

10 SECTION 37. 77.51 (21p) of the statutes is created to read:

11 77.51 (21p) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,
 12 and any ^{other} item that contains tobacco.

13 SECTION 38. 77.52 (1) of the statutes is amended to read:

14 77.52 (1) For the privilege of selling, licensing, leasing or renting tangible
 15 personal property, including accessories, components, attachments, parts, supplies
 16 and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the
 17 ~~gross receipts~~ sales price from the sale, lease or rental of tangible personal property,
 18 including accessories, components, attachments, parts, supplies and materials, sold,
 19 leased or rented at retail in this state.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

20 SECTION 39. 77.52 (2) (intro.) of the statutes is amended to read:

21 77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing
 22 the services described under par. (a) at retail in this state to consumers or users, a
 23 tax is imposed upon all persons selling, performing or furnishing the services at the

*** NOTE: Should the concept of owning or possessing the taxable service be included at the end of this subsection? If not, why not?

1 rate of 5% of the ~~gross receipts~~ sales price from the sale, performance or furnishing
2 of the services.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

3 **SECTION 40. 77.52 (2) (a) 10. of the statutes is amended to read:**

4 **77.52 (2) (a) 10.** Except for installing or applying tangible personal property
5 which, when installed or applied, will constitute an addition or capital improvement
6 of real property, the repair, service, alteration, fitting, cleaning, painting, coating,
7 towing, inspection, and maintenance of all items of tangible personal property
8 unless, at the time of such repair, service, alteration, fitting, cleaning, painting,
9 coating, towing, inspection, or maintenance, a sale in this state of the type of property
10 repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or
11 maintained would have been exempt to the customer from sales taxation under this
12 subchapter, other than the exempt sale of a motor vehicle or truck body to a
13 nonresident under s. 77.54 (5) (a) and other than nontaxable sales under ~~s. ss.~~ ss. 77.51
14 (14r) and 77.522. For purposes of this paragraph, the following items shall be
15 considered to have retained their character as tangible personal property, regardless
16 of the extent to which any such item is fastened to, connected with, or built into real
17 property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust
18 systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators,
19 coolers, freezers, water pumps, water heaters, water conditioners and softeners,
20 clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and
21 radio antennas, incinerators, television receivers and antennas, record players, tape
22 players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs,
23 bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps,
24 electronic dust collectors, grills and rotisseries, bar equipment, intercoms,

1 recreational, sporting, gymnasium and athletic goods and equipment including by
2 way of illustration but not of limitation bowling alleys, golf practice equipment, pool
3 tables, punching bags, ski tows, and swimming pools; equipment in offices, business
4 facilities, schools, and hospitals but not in residential facilities including personal
5 residences, apartments, long-term care facilities, as defined under s. 16.009 (1) (em),
6 state institutions, as defined under s. 101.123 (1) (i), Type 1 secured correctional
7 facilities, as defined in s. 938.02 (19), or similar facilities including, by way of
8 illustration but not of limitation, lamps, chandeliers, and fans, venetian blinds,
9 canvas awnings, office and business machines, ice and milk dispensers,
10 beverage-making equipment, vending machines, soda fountains, steam warmers
11 and tables, compressors, condensing units and evaporative condensers, pneumatic
12 conveying systems; laundry, dry cleaning, and pressing machines, power tools,
13 burglar alarm and fire alarm fixtures, electric clocks and electric signs. "Service"
14 does not include services performed by veterinarians. The tax imposed under this
15 subsection applies to the repair, service, alteration, fitting, cleaning, painting,
16 coating, towing, inspection, or maintenance of items listed in this subdivision,
17 regardless of whether the installation or application of tangible personal property
18 related to the items is an addition to or a capital improvement of real property, except
19 that the tax imposed under this subsection does not apply to the original installation
20 or the complete replacement of an item listed in this subdivision, if such installation
21 or replacement is a real property construction activity under s. 77.51 (2).

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

22 SECTION 41. 77.52 (3p) of the statutes is created to read:

23 77.52 (3p) If a lessor of tangible personal property ^{has} reimbursed the vendor for
24 ^{the} sales tax on the sale of the property by the vendor to the lessor, the tax due from the

1 lessor on the rental receipts may be offset by a credit equal to the tax otherwise due
2 on the rental receipts from the property for the reporting period. The credit shall
3 expire when the cumulative rental receipts equal the sales price upon which the
4 vendor paid sales taxes to this state. If a purchaser of tangible personal property
(5) ^{has} reimbursed the vendor of the property for ^{the} sales tax on the sale and subsequently,
6 before making any use of the property other than retention, demonstration, or
7 display while holding it for sale or rental, makes a taxable sale of the property, the
8 tax due on the taxable sale may be offset by the tax reimbursed.

9 SECTION 42. 77.52 (5m) of the statutes is created to read:

10 77.52 (5m) The department may, in cases where it is satisfied that an undue
(17) hardship would otherwise result, permit the reporting of ^a sales price on some basis
12 other than the accrual basis.

13 SECTION 43. 77.52 (6) [✓] of the statutes is repealed.

14 SECTION 44. 77.52 (7) of the statutes is amended to read:

15 77.52 (7) Every person desiring to operate as a seller within this state who
16 holds a valid certificate under s. 73.03 (50) shall file with the department an
17 application for a permit for each place of operations. Every application for a permit
18 shall be made upon a form prescribed by the department and shall set forth the name
19 under which the applicant intends to operate, the location of the applicant's place of
20 operations, and the other information that the department requires. The Except as
21 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;
22 in the case of sellers other than sole proprietors, the application shall be signed by
23 the person authorized to act on behalf of such sellers. A nonprofit organization that
(24) has ~~gross receipts~~ ^a sales price taxable under s. 77.54 (7m) shall obtain a seller's permit
(25) and pay taxes under this subchapter on all taxable ~~gross receipts~~ ^s sales price ^s received

1 after it is required to obtain that permit. If that organization becomes eligible later
2 for the exemption under s. 77.54 (7m) except for its possession of a seller's permit,
3 it may surrender that permit.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

4 **SECTION 45.** 77.52 (7b) of the statutes is created to read:

5 77.52 (7b) Any person who may register under sub. (7) may designate an agent,
6 in writing, to register with the department under sub. (7), subject to the department's
7 approval.

8 **SECTION 46.** 77.52 (13) of the statutes is amended to read:

9 77.52 (13) For the purpose of the proper administration of this section and to
10 prevent evasion of the sales tax it shall be presumed that all receipts are subject to
11 the tax until the contrary is established. The burden of proving that a sale of tangible
12 personal property or services is not a taxable sale at retail is upon the person who
13 makes the sale unless that person takes from the purchaser a certificate to the effect
14 that the property or service is purchased for resale or is otherwise exempt; except
15 that no certificate is required for sales of cattle, sheep, goats, and pigs that are sold
16 at a livestock market, as defined in s. 95.68 (1) (c) [s. 95.68 (1) (ag)], and no certificate
17 is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale
18 in a warehouse in or from which the commodity is deliverable on a contract for future
19 delivery subject to the rules of a commodity market regulated by the U.S. commodity
20 futures trading commission if upon the sale the commodity is not removed from the
21 warehouse.

NOTE: NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending. NOTE:

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

22 **SECTION 47.** 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are consolidated,
23 renumbered 77.52 (14), and amended to read:

1 77.52 (14) The certificate referred to in sub. (13) relieves the seller from the
2 burden of proof only if any of the following is true: 1[✓] The ~~the~~ certificate is taken in
3 good faith from a person who is engaged as a seller of tangible personal property or
4 taxable services and who holds the permit provided for in sub. (9) and who, at the
5 time of purchasing that the person purchases the tangible personal property or
6 services, intends to sell it in the regular course of operations or is unable to ascertain
7 at the time of purchase whether the property or service will be sold or will be used
8 for some other purpose. (b)₂[✓] The certificate referred to in sub. (13) shall be signed
9 by and bear the name and address of provide information that identifies the
10 purchaser, and shall indicate the general character of the tangible personal property
11 or service sold by the purchaser and the basis for the claimed exemption. The
12 certificate shall be in such form as the department prescribes.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 306, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

13 SECTION 48. 77.52 (14) (a) 2. of the statutes is repealed.

14 SECTION 49. 77.52 (15) of the statutes is amended to read:

15 77.52 (15) If a purchaser who gives a resale certificate makes any use of the
16 property other than retention, demonstration or display while holding it for sale,
17 lease or rental in the regular course of the purchaser's operations, the use shall be
18 taxable to the purchaser under s. 77.53 as of the time that the property is first used
19 by the purchaser, and the sales purchase price of the property to the purchaser shall
20 be the measure of the tax. ~~Only when there is an unsatisfied use tax liability on this~~
21 ~~basis because the seller has provided incorrect information about that transaction~~
22 ~~to the department shall the seller be liable for sales tax with respect to the sale of the~~
23 ~~property to the purchaser~~ This subsection does not apply to candy, soft drinks, and
24 prepared food; and to disposable products that are transferred with candy, soft

Lo

- 1 drinks, and prepared food; that a restaurant provides to the restaurant's employees
 2 during the work hours of the employees.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

3 **SECTION 50. 77.522 of the statutes is created to read:**

4 **77.522 Sourcing.** (1) SALES. (a) In this section:

5 1. "Direct mail form" means a form prescribed by the department.

6 2. "Exemption form" means the multiple-points-of-use exemption form.

7 3. "Product" includes tangible personal property, digital goods, and services.

8 4. "Receive" means taking possession of tangible personal property; making
 9 first use of services; or taking possession or making first use of digital goods,
 10 whichever comes first. "Receive" does not include a shipping company taking
 11 possession of tangible personal property on a purchaser's behalf.

12 5. "Transportation equipment" means all of the following:

13 a. Locomotives and railcars that are used to carry persons or property in
 14 interstate commerce.

15 b. Trucks and truck tractors that have a gross vehicle weight rating of 10,001
 16 pounds or greater, trailers, semi-trailers, and passenger buses, if such vehicles are
 17 registered under the international registration plan and operated under the
 18 authority of a carrier that is authorized by the federal government to carry persons
 19 or property in interstate commerce.

20 c. Aircraft that is operated by air carriers that are authorized by the federal
 21 government or a foreign authority to carry persons or property in interstate
 22 commerce.

23 d. Containers that are designed for use on the vehicles described in subd. 1.

24 a. to c. and component parts attached to or secured on such vehicles.

*as prescribed by
the department*

5

1 (b) Except as provided in pars. (c) to (f),[✓] to determine which jurisdiction may
2 impose a sales tax or a use tax on a sale, the location of a sale is determined as follows:

3 1. If a purchaser receives the product at a seller's business location, the sale
4 occurs at that business location.

5 2. If a purchaser does not receive the product at a seller's business location, the
6 sale occurs at the location where the purchaser, or the purchaser's designated donee,
7 receives the product, including the location indicated by the instructions known to
8 the seller for delivery to the purchaser or the purchaser's designated donee.

9 3. If the location of a sale cannot be determined under subds. 1.[✓] and 2.,[✓] the sale
10 occurs at the purchaser's address as indicated by the seller's business records, if the
11 records are maintained in the ordinary course of the seller's business and if using
12 that address to establish the location of a sale is not in bad faith.

13 4. If the location of a sale cannot be determined under subds. 1. ~~and~~ 3.,^{to ✓} the sale
14 occurs at the purchaser's address as obtained during the consummation of the sale,
15 including the address indicated on the purchaser's payment instrument, if no other
16 address is available and if using that address is not in bad faith.

17 5. If the location of a sale cannot be determined under subds. 1. ~~and~~ 4.,^{to ✓} the
18 location of the sale is determined as follows:

19 a. If the item sold is tangible personal property, the sale occurs at the location
20 from which the tangible personal property is shipped.

21 b. If the item sold is a digital good, digital service, or prewritten software; and
22 such good, service, or software is concurrently available for use in more than one
23 taxing jurisdiction, the sale occurs at the location from which the digital good, digital
24 service, or prewritten software was first available for transmission by the seller.

1 c. If a service, other than a digital service, is sold, the sale occurs at the location
2 from which the service was provided.

3 (c) The sale of direct mail occurs at the location specified in the direct mail form
4 that the purchaser of the service provides to the seller at the time of sale or, if the
5 purchaser does not provide a direct mail form, the location from which the direct mail
6 is shipped. If the purchaser provides a direct mail form to the seller, the purchaser
7 shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53
8 (1) on all purchases for which the tax is due.

****NOTE: The October 2002 issue paper related to this idea provides contrary instructions. The paper, on one hand, requires the purchaser to provide a direct mail form for a direct mail purchase, yet, on the other hand, provides a sourcing option in the event that no form is provided. I have chosen to incorporate both ideas into the draft by making the provision of a direct mail form voluntary. Is that consistent with the intent? If not, than I suggest either eliminating the other sourcing option or creating, as a compliance incentive, a penalty for not providing the form.

9 (d) 1. A business purchaser who purchases a digital good, digital service, or
10 prewritten software who does not hold a direct pay permit under s. 77.52 (17m), and
11 who knows at the time that the purchaser purchases such good, service, or software
12 that the good, service, or software will be concurrently available for use in more than
13 one taxing jurisdiction shall provide an exemption form to the seller, in conjunction
14 with the purchase, and shall pay or remit, as appropriate, to the department the tax
15 imposed under s. 77.53 (1) on all purchases for which the tax is due.

16 2. To apportion the amount of the tax due multiple taxing jurisdictions, a
17 purchaser who provides an exemption form under ~~subd. 1.~~ ^{subd. 1.} shall use any reasonable,
18 consistent, and uniform apportionment method supported by the purchaser's
19 business records that exist at the time of the sale.

20 3. An exemption form provided under subd. 1. shall remain effective for all sales
21 by the seller who received the form to the purchaser who provided the form, unless

1 the purchaser revokes the form in writing and provides such a revocation to the
2 seller.

3 4. A business purchaser who purchases a digital good, digital service, or
4 prewritten software, who holds a direct pay permit under s. 77.52 (17m), and who
5 knows at the time that the purchaser purchases such good, service, or software that
6 the good, service, or software will be concurrently available for use in more than one
7 taxing jurisdiction is not required to provide an exemption form to the seller, but
8 shall collect, pay, or remit, as appropriate, to the department the tax imposed under
9 s. 77.53 (1) and shall use the apportionment method described under par. (b) to
10 apportion the tax due multiple taxing jurisdictions.

11 (e) The sale of transportation equipment occurs at the location where the
12 transportation equipment is delivered.

13 (f) This subsection does not apply to sales or use taxes imposed under this
14 subchapter and subch. V on the sale of telecommunications services and use taxes
✓ 15 imposed under subch. V on the sale of motor vehicles, aircraft, or watercraft.

16 (2) LEASE OR RENTAL. (a) Except as provided in pars. (b) and (c), with regards
17 to the first payment on the lease or rental, the lease or rental of tangible personal
18 property occurs at the location where the property is delivered. If the property is
19 moved from the place where the property was initially delivered, the subsequent
20 periodic payments on the lease or rental occur at the property's location.

✓ 21 (b) The lease or rental of vehicles and aircraft occurs at the location where the
✓ 22 vehicles or aircraft are kept.

23 (c) The lease or rental of transportation equipment occurs at the location where
24 the transportation equipment is delivered.

25 (3) TELECOMMUNICATIONS. (a) In this subsection:

1 1. "Air-to-ground radiotelephone service" means a radio service in which
2 common carriers are authorized to offer and provide radio telecommunications
3 service for hire to subscribers in aircraft.

 ****NOTE: This is the definition of "air-to-ground radiotelephone service" under 47
CFR, part 22.99.

4 2. "Call-by-call basis" means any method of charging for telecommunications
5 services by which the price of such services is measured by individual calls.

6 3. "Channel termination point" means the location from which a customer
7 inputs or receives communications.

8 4. "Communications channel" means a physical or virtual path of
9 communications over which signals are transmitted among customer channel
10 termination points.

11 5. "Customer" means a person who enters into a contract with a seller of
12 telecommunications services or, in any transaction for which the end user is not the
13 person who entered into a contract with the seller of telecommunications services,
14 the end user of telecommunications services. "Customer" does not include a person
15 who resells telecommunications services.

16 6. "End user" means an individual who uses a telecommunications service.

17 7. "Mobile telecommunications service" means a mobile telecommunications
18 service under 4 USC 116 to 126, as amended by P.L. 106-252.

19 8. "Place of primary use" means place of primary use, as determined under 4
20 USC 116 to 126, as amended by P.L. 106-252.

21 9. "Postpaid calling service" means a telecommunications service that is
22 obtained by paying for it on a call-by-call basis using a bank card, travel card, credit
23 card, debit card, or similar method, or by charging the payment to a telephone

1 number that is not associated with the location where the telecommunications
2 service originates or terminates. "Postpaid calling service" includes a service that
3 would otherwise be a prepaid calling service except that the service provided to the
4 customer is not exclusively a telecommunications service.

5 10. "Prepaid calling service" means the right to access a service that is
6 exclusively a telecommunications service; that is paid for in advance of providing
7 such a service; that requires using an access number or authorization code to
8 originate calls; and that is sold in predetermined units or dollars that decrease with
9 use.

10 11. "Private communication service" means a telecommunications service that
11 entitles the customer to exclusive or priority use of a communications channel or
12 group of communications channels among termination points, regardless of the
13 manner in which the communications channel or group of communications channels
14 is connected, and includes providing switching capacity, extension lines, stations,
15 and other similar services.

16 12. "Radio service" means a communication service provided by the use of radio,
17 including radiotelephone, radiotelegraph, paging and facsimile service.

***NOTE: This is the definition of "radio service" under 47 CFR, part 22.99 and is
included in this draft because it is necessary to understand the definition
of "air-to-ground radiotelephone service" created under subdivision 1.

18 13. "Radiotelegraph service" means transmitting messages from one place to
19 another by means of radio.

20 14. "Radiotelephone service" means transmitting sound from one place to
21 another by means of radio.

***NOTE: The definitions under subdivisions 13 and 14 are terms used to define
"radio service" under subdivision 12.

22 15. "Service address" means:

any of the following

1 a. The location of the telecommunications equipment to which a customer's call
2 is charged and from which the call originates or terminates, regardless of where the
3 call is billed or paid.

4 b. If the location described under subd. 15. a. cannot be determined, the location
5 where the signal of the telecommunications service originates, as identified by the
6 seller's telecommunications system or, if the signal is not transmitted from the
7 seller's telecommunications system, by information that the seller received from the
8 seller's service provider.

9 c. If the location described under subd. 15. a. and b., cannot be determined, the
10 customer's place of primary use.

11 (b) Except as provided in pars. (d) to (g), the sale of a telecommunications
12 service that is sold on a call-by-call basis occurs in the taxing jurisdiction for sales
13 and use tax purposes where the call originates and terminates, in the case of a call
14 that originates and terminates in the same such jurisdiction, or the taxing
15 jurisdiction for sales and use tax purposes where the call originates or terminates
16 and where the service address is located.

17 (c) Except as provided in pars. (d) to (g), the sale of a telecommunications
18 service that is sold on a basis other than a call-by-call basis occurs at the customer's
19 place of primary use.

20 (d) The sale of a mobile telecommunications service, except ^{an} air-to-ground
21 radiotelephone service and a prepaid calling service, occurs at the customer's place
22 of primary use.

23 (e) The sale of a ~~post~~^{pre}paid calling service occurs at the location where the signal
24 of the telecommunications service originates, as identified by the seller's
25 telecommunications system or, if the signal is not transmitted from the seller's

1 telecommunications system, by information that the seller received from the seller's
2 service provider.

3 (f) The sale of a prepaid calling service occurs at the location from which the
4 service was provided or, if the service is a mobile telecommunications service, the
5 location associated with the mobile telephone number.

6 (g) 1. The sale of a private communication service that represents a separate
7 charge related to a customer channel termination point occurs at the location of the
8 customer channel termination point.

9 2. The sale of a private communication service in which all customer channel
10 termination points are located entirely in one taxing jurisdiction for sales and use
11 tax purposes occurs in the taxing jurisdiction for sales and use tax purposes in which
12 the customer channel termination points are located.

13 3. If the segments are charged separately, the sale of a private communication
14 service that represents segments of a communications channel between 2 customer
15 channel termination points that are located in different taxing jurisdictions for sales
16 and use tax purposes occurs in an equal percentage in both such jurisdictions.

17 4. If the segments are not charged separately, the sale of a private
18 communication service that represents segments of a communications channel that
19 is located in more than one taxing jurisdiction for sales and use tax purposes, occurs
20 in each such jurisdiction in a percentage determined by dividing the number of
21 customer channel termination points in that jurisdiction by the number of customer
22 channel termination points in all jurisdictions where segments of the
23 communications channel are located.

24 SECTION 51. 77.523 of the statutes is renumbered 77.523 (1) and amended to
25 read:

1 77.523 (1) ⁽²⁵⁾ ~~Customer remedy~~ ^{No (B)}. If a customer purchases a service that is
2 subject to 4 USC 116 to 126, as amended by P.L. 106-252, and if the customer believes
3 that the amount of the tax assessed for the service under this subchapter or the place
4 of primary use or taxing jurisdiction assigned to the service is erroneous, the
5 customer may request that the service provider correct the alleged error by sending
6 a written notice to the service provider. The notice shall include a description of the
7 alleged error, the street address for the customer's place of primary use of the service,
8 the account name and number of the service for which the customer seeks a
9 correction, and any other information that the service provider reasonably requires
10 to process the request. Within 60 days from the date that a service provider receives
11 a request under this ~~section~~ [✓] subsection, the service provider shall review its records
12 to determine the customer's taxing jurisdiction. If the review indicates that there is
13 no error as alleged, the service provider shall explain the findings of the review in
14 writing to the customer. If the review indicates that there is an error as alleged, the
15 service provider shall correct the error and shall refund or credit the amount of any
16 tax collected erroneously, along with the related interest, as a result of the error from
17 the customer in the previous 48 months, consistent with s. 77.59 (4). A customer may
18 take no other action, or commence any action, to correct an alleged error in the
19 amount of the tax assessed under this subchapter on a service that is subject to 4 USC
20 116 to 126, as amended by P.L. 106-252, or to correct an alleged error in the assigned
21 place of primary use or taxing jurisdiction, unless the customer has exhausted his
22 or her remedies under this ~~section~~ [✓] subsection ✓

History: 2001 a. 109.

23 SECTION 52. 77.523 (2) of the statutes is created to read:

1 77.523 (2) If a customer purchases a service that is not subject to 4 USC 116
2 to 126, as amended by P.L. 106-252, or tangible personal property, and if the
3 customer believes that the amount of the tax assessed for the sale of the service or
4 property under this subchapter is erroneous, the customer may request that the
5 seller correct the alleged error by sending a written notice to the seller. The notice
6 shall include a description of the alleged error and any other information that the
7 seller reasonably requires to process the request. Within 60 days from the date that
8 a seller receives a request under this subsection, the seller shall review its records
9 to determine the validity of the customer's claim. If the review indicates that there
10 is no error as alleged, the seller shall explain the findings of the review in writing to
11 the customer. If the review indicates that there is an error as alleged, the seller shall
12 correct the error and shall refund the amount of any tax collected erroneously, along
13 with the related interest, as a result of the error from the customer in the previous
14 48 months, consistent with s. 77.59 (4). A customer may take no other action, or
15 commence any action, to correct an alleged error in the amount of the tax assessed
16 under this subchapter on a service that is not subject to 4 USC 116 to 126, as amended
17 by P.L. 106-252, or tangible personal property, unless the customer has exhausted
18 his or her remedies under this ~~section~~ *subsection*.

19 SECTION 53. 77.524 (1) (b) of the statutes is renumbered 77.51 (1g). ✓

20 SECTION 54. 77.53 (1) of the statutes is amended to read:

21 77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed
22 on the use or consumption in this state of taxable services under s. 77.52 purchased
23 from any retailer, at the rate of 5% of the sales purchase price of those services; on
24 the storage, use or other consumption in this state of tangible personal property
25 purchased from any retailer, at the rate of 5% of the sales purchase price of that

1 property; and on the storage, use or other consumption of tangible personal property
2 manufactured, processed or otherwise altered, in or outside this state, by the person
3 who stores, uses or consumes it, from material purchased from any retailer, at the
4 rate of 5% of the sales purchase price of that material.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

5 **SECTION 55.** 77.53 (4) of the statutes is repealed.

6 **SECTION 56.** 77.53 (9) of the statutes is amended to read:

7 77.53 (9) Every retailer selling tangible personal property or taxable services
8 for storage, use or other consumption in this state shall register with the department
9 and obtain a certificate under s. 73.03 (50) and give the name and address of all
10 agents operating in this state, the location of all distribution or sales houses or offices
11 or other places of business in this state, the standard industrial code classification
12 of each place of business in this state and the other information that the department
13 requires. Any person who may register under this subsection may designate an
14 agent, in writing, to register with the department under this subsection, subject to
15 the department's approval.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

16 **SECTION 57.** 77.53 (9m) of the statutes is amended to read:

17 77.53 (9m) Any person who is not otherwise required to collect any tax imposed
18 by this subchapter and who makes sales to persons within this state of tangible
19 personal property or taxable services the use of which is subject to tax under this
20 subchapter may register with the department under the terms and conditions that
21 the department imposes and shall obtain a valid certificate under s. 73.03 (50) and
22 thereby be authorized and required to collect, report and remit to the department the
23 use tax imposed by this subchapter. Any person who may register under this

- 1 subsection may designate an agent, in writing, to register with the department
2 under this subsection, subject to the department's approval.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

- 3 **SECTION 58.** 77.53 (11) of the statutes is amended to read:

- 4 77.53 (11) The certificate referred to in sub. (10) relieves the person selling the
5 property or service from the burden of proof only if taken ~~in good faith~~ from a person
6 ~~who is engaged as a seller of tangible personal property or taxable services and who~~
7 ~~holds the permit provided for by s. 77.52 (9) and who, at the time of purchasing that~~
8 the person purchases the tangible personal property or taxable service, ~~intends to~~
9 ~~sell it in the regular course of operations or is unable to ascertain at the time of~~
10 ~~purchase whether the property or service will be sold or will be used for some other~~
11 ~~purpose, or if taken in good faith from a person claiming exemption. The certificate~~
12 ~~shall be signed by and bear the name and address of~~ provide information that
13 identifies the purchaser and shall indicate ~~the number of the permit issued to the~~
14 ~~purchaser, the general character of tangible personal property or taxable service sold~~
15 ~~by the purchaser and the basis for the claimed exemption. The certificate shall be~~
16 substantially in the form that the department prescribes.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

- 17 **SECTION 59.** 77.53 (17) of the statutes is amended to read:

- 18 77.53 (17) This section does not apply to tangible personal property purchased
19 outside this state, as determined under s. 77.522,[✓] other than motor vehicles, boats,
20 snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers,
21 all-terrain vehicles and airplanes registered or titled or required to be registered or
22 titled in this state, which is brought into this state by a nondomiciliary for the
23 person's own storage, use or other consumption while temporarily within this state

1 when such property is not stored, used or otherwise consumed in this state in the
2 conduct of a trade, occupation, business or profession or in the performance of
3 personal services for wages or fees.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

4 **SECTION 60.** 77.53 (17m) of the statutes is amended to read:

5 77.53 (17m) This section does not apply to a boat purchased in a state
6 contiguous to this state, as determined under s. 77.522, by a person domiciled in that
7 state if the boat is berthed in this state's boundary waters adjacent to the state of the
8 domicile of the purchaser and if the transaction was an exempt occasional sale under
9 the laws of the state in which the purchase was made.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

10 **SECTION 61.** 77.53 (17r) (a) of the statutes is amended to read:

11 77.53 (17r) (a) It is purchased in another state, as determined under s. 77.522.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

12 **SECTION 62.** 77.53 (18) of the statutes is amended to read:

13 77.53 (18) This section does not apply to the storage, use or other consumption
14 in this state of household goods for personal use or to aircraft, motor vehicles, boats,
15 snowmobiles, mobile homes, trailers, semitrailers and all-terrain vehicles, for
16 personal use, purchased by a nondomiciliary of this state outside this state, as
17 determined under s. 77.522, 90 days or more before bringing the goods or property
18 into this state in connection with a change of domicile to this state.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109.

19 **SECTION 63.** 77.54 (1) of the statutes is amended to read:

20 77.54 (1) The ~~gross receipts~~ sales price from the sale of and the storage, use or
21 other consumption in this state of tangible personal property and services the ~~gross~~
22 ~~receipts~~ sales price from the sale of which, or the storage, use or other consumption

1 of which, this state is prohibited from taxing under the constitution or laws of the
2 United States or under the constitution of this state.

History: 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291; 1999 a. 9, 65, 83; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16, 103, 109.

3 **SECTION 64.** 77.54 (1b) of the statutes is created to read:

4 **77.54 (1b)** The part of the sales price or purchase price that the seller refunds
5 in cash or credit as a result of returned property or adjustments in the sales price or
6 purchase price after the sale has been completed, if the seller has included the
7 refunded price in a prior return made by the seller and has paid the tax on such price,
8 and if the seller has returned to the purchaser in cash or in credit all tax previously
9 paid by the purchaser on the amount of the refund at the time of the purchase.

10 **SECTION 65.** 77.54 (1e) of the statutes is created to read:

11 **77.54 (1e)** Thirty-five percent of the sales price or purchase price, excluding
12 trade-ins, of a new mobile home, as defined in s. 340.01 (29),[✓] that is a primary
13 housing unit or of a new mobile home, as defined in s. 340.01 (29),[✓] that is transported
14 in 2 unattached sections if the total size of the combined sections, not including
15 additions and attachments, is at least 984 square feet measured when the sections
16 are ready for transport.

17 **SECTION 66.** 77.54 (1g) of the statutes is created to read:

18 **77.54 (1g)** At the retailer's option; except that after the retailer chooses an
19 option the retailer may not use the other option for other sales without the
20 department's written approval; either 35% of the sales price or purchase price of a
21 manufactured building, as defined in s. 101.71 (6),[✓] or an amount equal to the sales
22 price or purchase price of the manufactured building minus the cost of materials that
23 become an ingredient or component part of the building.